

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 2142 OF 1985

WITH

FIRST APPEAL NO. 2143 OF 1985

G.S.R.T.C, Ahmedabad

APPELLANT

VS

Mariambibi wd/o Mohmedkhan
and others.

RESPONDENTS

For Approval and Signature:

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

First appeal No, 2142/85

Ms Maya Desai for Mr.M.D.Pandya for the appellant

Mr.E.E.Saiyed for respondents Nos.1 to 6

Notice served for respondent No.7

Mr.G.S.Patel, for respondent No.8.

First appeal No. 2143/85

Ms Maya Desai for Mr.M.D.Pandya for appellant

Notice served for respondents Nos.1/1,1/3,1/5 and 2

Notice unserved for respondents Nos. 1/4 as expired

Notice served for respondent No. 3

Mr.P.V.Nanavati for respondent No.4

CORAM; R.K.ABICHANDANI AND C.K.BUCH,JJ.

January 21,1999

Oral judgment (Per Abichandani,J.)

Both these appeals arise from a common judgment and award dated 3.12.1984 made by the Motor Accident Claims Tribunal, Mehsana in Motor Accident Claim Petitions Nos.. 431 of 1980 and 123 of 1982 and have been argued together.They are being disposed of by this common judgment.

2. In claim petition No. 431 of 1980,the Tribunal awarded compensation of Rs.65,030/- with interest at the rate of 6% per annum for the death of Mohmedkhan Jivankhan ,the driver-owner of the tanker,who died in the accident ,as against the claim of Rs. 2,00,000/- made by the claimants. In claim petition No. 123 of 1982, where the injured had put up the claim,but later ,his heirs pursued the petition,the Tribunal holding that there was nexus between the accident and the death,awarded a total sum of Rs. 49,400/- with interest at the rate of 6% per annum to the claimants, for the death of Valaji Vasanji who was a passenger in the S.T.Bus which had collided with the tanker.

3. The accident occurred on 17.10.1980 on the Ahmedabad-Delhi Highway near Unjha bus stand at the interception of the roads.The admitted facts are that the tanker in question was proceeding from north to south on the Highway from Palanpur to Ahmedabad; while the S.T.bus in question was proceeding from west to east as it came from Patan and was going towards Unjha.The accident is said to have occurred at the intersection of the roads.Admittedly, Patan-Unjha road had a bye-way which intersected the Highway at that spot.

4. According to the claimants of claim petition No. 431 of 1980, Mohmedkhan who was the owner of the tanker (No. GTG 2118) was at the relevant time, driving it and the cleaner Shivsinh Sohansinh was by his side in the driver's cabin. At that time, the tanker was being driven at a moderate speed but when it came at the intersection, the S.T.bus driven by Mustafa came at an excessive speed and dashed against the tanker pushing it off beyond the eastern side of Highway in a ditch. According to these claimants, the accident occurred due to rash and negligent driving of the driver of S.T.bus .The case of the claimants was that the net income of Mohmadkhan was Rs.1,000/per month.A sum of Rs. 50,000/- was claimed for the expenses incurred on the repairs of the tanker. The Tribunal gave a finding that the income of Mohmadkhan would have been Rs. 800/-per month and after deducting one-fourth of that amount, worked out the dependency benefit at Rs.600/- per month. Applying the multiplier of 12, the total amount was worked out at Rs. 86,400/-.A sum of Rs.5,000/- was awarded for loss of expectancy of life and Rs. 1,500/- for sundry expenses. The claim regarding damages to the tanker was rejected. The Tribunal held

that there was some negligence even on the part of the tanker driver apportioning his liability at 30% as against liability of the S.T.bus driver which was assessed at 70%.

5. In Claim petition No. 123 of 1982, the finding regarding negligence of the respective drivers remained the same since evidence led was in common. On the question of compensation, the Tribunal found that Valaji could not recover from the injuries which he had sustained due to the accident and he died on 15/1/1982 that is- after considerable time from 17.10.1980 being the date of accident. The death had occurred due to the injuries which were caused to him. Valaji had sustained injuries on his face, shoulder and chest. It appears that because of his poverty, they could not perform the operation which was advised for setting right the dislocation of his right shoulder. The tribunal assessed the income of Valaji who was a casual labourer only at Rs.300/- per month and deducted Rs.75/- therefrom for coming to the dependency amount of Rs.225/- per month and applying multiplier of 12, worked out the dependency benefit at Rs.32,400/- to which conventional amount of Rs.5000/- under the head of loss of expectancy of life was added and an amount of Rs.10,000/- was awarded on account of his prolonged pain and suffering with Rs. 2,000/- for sundry expenses.

6. The learned counsel appearing for the appellant Corporation in these two appeals contended that there was greater negligence on the part of the tanker driver. Relying upon the panchnama, exh. 60, it was sought to be contended that the accident must have taken place when the tanker driver was driving on the wrong side of the road. He submitted that had the tanker driver proceeded on his correct side, the accident would not have occurred. It was further argued that even if the court held that there was some negligence on the part of the S.T bus driver, that negligence was lesser than the negligence of the tanker driver and according to the learned counsel, negligence of the S.T. bus driver was not more than 30%. On the question of compensation, the learned counsel submitted that the amounts awarded in both the matters were excessive.

7.1 The evidence on the issue of negligence is common in both the matters as observed by the Tribunal in para 14 of the award. Shivsinh who was travelling along with the driver of the tanker in the cabin, in his deposition at Exh. 57 has stated that the tanker loaded with oil was, on 17.10.1980, being driven from Palanpur to Ahmedabad in the morning hours at a speed of 30 to 35 K.Ms. per hour when the accident took place near the intersection of roads. He has stated that the S.T. bus had suddenly emerged at an excessive speed from the western side and collided with the tanker. According to him, the front portion of the S.T. bus had collided with the side of the driver's cabin of the tanker and because of the impact, the tanker was pushed

towards the eastern side and fell in a ditch. He has stated that S.T.bus had, after the impact, swerved in the southern direction and halted about 150 feet away from the place of the impact.

7.2 The driver of the S.T. bus Mustafa , on the other hand, deposed that when he had already entered the cross roads, the tanker came with tremendous speed from the northern side of the Highway and collided with the S.T. bus. According to him, when he was about to enter the Highway from the western side, there was a vehicle lying ahead which prevented him from properly sighting the vehicles coming from the northern side. When he entered the Highway, he first looked towards southern direction and then when he saw towards the northern side, he found the tanker which came and collided with the S.T. bus. According to Mustafa, the tanker was being driven from north to south , more on the western side of the road, that is- on its wrong side, and, it is on the basis of this deposition that the learned counsel developed an argument that had the tanker been driven on the correct side of the road, the accident would not have occurred.

8. Panch witnesses Prahladbhai Patel and Vishnubhai Mafat, whose depositions are at Exhs. 29 and 30 have deposed to the effect that the accident had taken place at the spot which was about 6' from the eastern edge of the north-south Highway. Panchnama, Exh. 60 shows that the tanker was found in the ditch on the eastern side of the north-south Highway and the S.T. bus was lying about 110' away from the place of the accident in the southern direction. The evidence of the panch witnesses and panchnama indicates that the damage to the S.T. bus was on its front while damage to the tanker was on its side portion of the driver's cabin. The fact that the tanker was pushed towards eastern side and had fallen in the ditch and that the damage to the S.T. bus was on its front, clearly indicates that it was the S.T. bus which had caused the impact. It is more likely, in view of the nature of the impact and the fact that the tanker was found in the ditch which is on the eastern side of the Highway (which was the correct side of the tanker while driving from the northern side), that the tanker was being driven on its correct side. If the tanker were driven on the wrong side i.e. on the western side of the north-south Highway, then obviously, it could not have been thrown in a ditch which was across the road on the eastern side. The nature of damage caused to these vehicles, depositions of the panch witnesses and contents of the panchnama clearly go to support the say of Shivsinh that the tanker was being driven on its correct side and that because of the impact, it was overthrown in the ditch on the eastern side of the road. It is also proved that after the impact, the S.T. bus had travelled about 110' and halted which indicates the high speed at which it was coming. Admittedly, the S.T. bus was coming from a bye-road and therefore while entering the Highway , it was incumbent upon the S.T. bus driver , under Rule 7 of the 10th

Schedule to the Motor Vehicles Act (as it was applicable at the relevant time) which contained driving regulations, to give way to the vehicles proceeding along the main road. Since the tanker was proceeding on the Highway which was the main road and the S.T.bus was about to enter the intersection from the bye-road, there was a greater duty on the part of the S.T. bus driver to look out for vehicles on the main road and to allow them to pass before entering the road intersection. The S.T. bus driver even though his vision was obstructed by the vehicle which was parked near the junction of the road, ought not to have rushed into the intersection before ascertaining whether there was any vehicle coming towards the intersection on the Highway. This aspect has rightly weighed with the Tribunal. We find ourselves in complete agreement with the Tribunal that negligence of the S.T. bus driver was much higher than that of the tanker driver. The evidence supports the finding that the negligence of the S.T.bus driver was 70%, which we uphold.

9. As regards the amount of compensation awarded in the Claim petition No. 431 of 1980, the the son of the deceased tanker driver in his deposition at Exh. 54 has categorically stated that his father was earning a net amount of Rs. 1,000/per month , after deducting all expenses incurred for plying the tanker which he had taken on higher purchase basis. The evidence clearly discloses that the tanker stood in the name of deceased Mohmedkhan. The insurance policy, Exh. 48 reflects this aspect. Shivsindh, the companion of the tanker driver in his deposition at Exh. 57 has also deposed to the effect that deceased Mohmedkhan was earning a net amount of Rs.1,000/- per month. Since there was no documentary evidence in support of the said income, the Tribunal reduced the amount to Rs. 800/- per month while keeping in view the fact that transport business was flourishing business. In our opinion, the Tribunal adopted a very conservative approach and there is absolutely no scope for scaling that net figure down to any other figure. The datum figure of Rs. 600/- per month after deducting one-fourth from the said income, was adopted for reaching the dependency benefit at Rs. 86,400/- on applying multiplier of 12 years which was appropriate in the circumstances. We find absolutely no reason to interfere with the total figure of Rs. 92,900/- scaled down to Rs. 65,030/- because of the contributory negligence of the tanker driver, to say the least, was a most conservative amount which could have been awarded in the facts and circumstances of the case.

10. In Claim Petition No. 123 of 1982, the Tribunal, in our opinion rightly, on the basis of the medical evidence and deposition of the son of the deceased at Exh.27, came to the finding that there was A nexus between the injuries caused as a result of the accident and the death of the Valaji. Though there was evidence of witnesses Anarji Valaji, Nanalal Maganlal and

Chunilal Lala, which indicated that Valaji was doing labour work and was earning about Rs. 30/- to 35/- per day, the Tribunal adopted a most conservative figure of Rs. 300/- per month and deducted a sum of Rs. 75/- therefrom. The amount of Rs. 32,400/- was worked out as dependency benefit by adopting multiplier of 12 years. In our opinion, anything less than this amount and other amounts granted for expectancy of life, pain and suffering and sundry expenses would have been ridiculous. 11. There is, therefore, absolutely no warrant for interfering with the impugned award. Both the appeals are, therefore, dismissed with no order as to costs.
